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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JAMES D. CUZZOLINA, Plaintiff and Appellant, v. PROTECTION ONE, INC., Defendant and Respondent.	E069010 (Super.Ct.No. RIC1505922) OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge. Affirmed.

James D. Cuzzolina, in pro. per., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, David B. Shapiro, Patrik Johansson and David D. Samani for Defendant and Respondent.

Plaintiff and appellant James D. Cuzzolina sued defendant and respondent Protection One, Inc. (Protection One) for violations of the Consumer Credit Reporting Agencies Act (CCRAA) (Civ. Code, § 1785.1 et seq.) and the unfair competition law

(UCL) (Bus. & Prof. Code, § 17200 et seq.). Cuzzolina alleges that Protection One violated Civil Code section 1785.25, subdivision (a),[1] which provides that "'[a] person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate.'" The trial court granted Protection One's motion for summary judgment, finding that Cuzzolina failed to establish that Protection One provided information to a credit reporting agency. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Cuzzolina was an officer of Crosstown Tools, Inc. (Crosstown Tools), an automotive and industrial tool wholesaler located in San Bernardino, California, that failed in 2009. Prior to its failure, Crosstown Tools contracted with Protection One for alarm services, and Cuzzolina executed a personal guaranty in favor of Protection One. Crosstown Tools and Cuzzolina failed to pay the amounts due under the agreement and guaranty.

In March 2009, Protection One assigned the debt to Asset Resources, Inc. (Asset Resources), a collection agency that is a defendant but not a party to this appeal. At the time, Crosstown Tools and Cuzzolina owed $3,049.56.

The parties disagree as to who reported the debt to Equifax, a credit reporting agency. Regardless, in 2015, Cuzzolina sent a letter to Protection One demanding that it remove information indicating, among other things, that Cuzzolina owed a balance of

[1] All further statutory references are to the Civil Code unless otherwise indicated.

$3,835, which he asserted was false. In response, Protection One stated that "the reported information is entirely accurate . . . ." Cuzzolina then brought suit, asserting causes of action for CCRAA violations, injunctive relief, punitive damages, and UCL violations.

Protection One moved for summary judgment. Protection One argued that it did not violate section 1785.25, subdivision (a) because, among other things, Asset Resources, not Protection One, reported the information to Equifax.

In opposition, Cuzzolina argued that Protection One provided the information to Equifax because it admitted the allegations of paragraph 11 of the verified complaint, which stated that "[a]s recently as April 24, 2015, Defendants have reported" the allegedly false information "regarding Plaintiff to Equifax." Even if Protection One did not directly provide the information to Equifax, Cuzzolina argued, it did so "through the acts of agent Asset Resources . . . ."

Following a hearing, the trial court granted summary judgment for Protection One.

II. DISCUSSION

A. *Applicable Law*

1. *Standard of Review*

We independently review an order granting summary judgment. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) "In ruling on the motion, the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

A defendant moving for summary judgment bears the burden of showing that one or more elements of the cause of action cannot be established by the plaintiff to the degree of proof that would be required at trial, or that there is a complete defense to the cause of action. (*Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1331; Code Civ. Proc., § 437c, subd. (o).) "[T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar, supra,* 25 Cal.4th at p. 850.) To be "material" for summary judgment purposes, a fact must relate to some claim or defense and it must be essential to the judgment in that, if proved, it could change the outcome of the case. (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 926.)

2. *Section 1785.25, Subdivision (a)*

"Generally, the CCRAA 'limits the dissemination of consumer credit information.'" (*McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784, 800.) The purpose of the CCRAA is "to require that consumer credit reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit . . . and other information in a manner which is fair and equitable to the consumer . . . ." (§ 1785.1, subd. (d).) Section 1785.25, subdivision (a) provides that "[a] person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or

inaccurate." Section 1785.31, subdivision (a), provides that "[a]ny consumer who suffers damages as a result of a violation of this title by any person may bring an action in a court of appropriate jurisdiction . . . ." (See *Sanai v. Saltz* (2009) 170 Cal.App.4th 746, 774-778 [holding that section 1785.25, subdivision (a) provides for a private cause of action].)

B. *Analysis*

The trial court was correct to grant summary judgment: Protection One satisfied its initial burden, and Cuzzolina did not satisfy his responsive burden. Specifically, Protection One established that it did not provide the allegedly incorrect information to Equifax, whether directly or through an agent, and Cuzzolina failed to introduce admissible evidence to show a triable issue on this element.

1. *Protection One's Initial Burden*

In support of its summary judgment motion, Protection One offered the declaration of Ciara Allen, its Collections Manager. Allen represented that after Crosstown Tools and Cuzzolina failed to pay the debt, Protection One assigned the debt to Asset Resources, who then reported the debt to Equifax.

Cuzzolina did not object to Allen's declaration, even though he did challenge its weight and merit. For instance, in his response to Protection One's separate statement, Cuzzolina "denied"[2] that certain of Allen's representations were true. In addition, at the

[2] We enclose the term in quotation marks because Cuzzolina should have "unequivocally state[d] whether" a given fact is "'disputed' or 'undisputed'" instead of admitting or denying facts. (Cal. Rules of Court, rule 3.1350(f)(2).)

hearing, Cuzzolina stated that Allen "doesn't back up any of [her statements] with any letters to Asset Resource or how much they sent to Asset Resource." Cuzzolina did not, however, separately file any written objections to evidence. (See Cal. Rules of Court, rule 3.1354(b) ["All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion."].) Cuzzolina's statement at the hearing, moreover, was not a formal objection. Although it is conceivable that the trial court should nevertheless have construed the statement as an oral objection to evidence,[3] the issue is ultimately immaterial. In his opening brief, Cuzzolina contends only that the trial court "probably should have considered the credibility of Allen's testimony and excluded it in the entirety." Cuzzolina offers no analysis as to why the trial court might have been compelled to entirely disregard Allen's declaration, so this "credibility" contention is "a point . . . merely asserted . . . without any argument of or authority for the proposition," and therefore "requires no discussion by the reviewing court."[4] (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

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[3] If the statement raised an oral objection and the trial court failed to rule on it, we would "presume[] that the objection[] [has] been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objection[] [is] preserved on appeal." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 524; see also Code Civ. Proc., § 437c, subd. (q).)

[4] Strictly speaking, Cuzzolina does cite authority, but the rule he cites squarely opposes his contention. Cuzzolina would like for us to conclude that Allen lacks credibility, but, as he observes, "'[a] court generally cannot resolve questions about a declarant's credibility in a summary judgment proceeding.'" (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065.)

As admitted, Allen's declaration that Protection One assigned the debt satisfied Protection One's initial burden. "'The word assign, in the ordinary legal sense, means to transfer title or ownership of property. [Citation.]' . . . ." (*Commercial Discount Co. v. Cowen* (1941) 18 Cal.2d 610, 614.) Once assigned, Asset Resources would have owned the debt, and Protection One would presumably have had no right to control what Asset Resources could do with the debt. (See *Malloy v. Fong* (1951) 37 Cal.2d 356, 370 ["The existence of the right of control and supervision establishes the existence of an agency relationship."].) Allen's representation that the debt was assigned to Asset Resources was therefore enough to "make a prima facie showing" that Protection One did not report the debt to Equifax directly or through an agent. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.)

2. *Cuzzolina's Responsive Burden*

Once Protection One met its burden, Cuzzolina was required to "produce '"*substantial*"' responsive evidence sufficient to establish a triable issue of fact." (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 415.) Cuzzolina failed to do so because he failed to cite any admissible evidence in his separate statement.

Code of Civil Procedure section 437c, subdivision (b)(3) provides that the opposing party must include a separate statement "that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed." Each such fact, as well as "any other material facts the opposing party contends are disputed," must be "followed by a reference to the supporting evidence." (Code Civ. Proc., § 437c, subd. (b)(3); see Cal. Rules of Court, rule 3.1350(f)(2) ["Citation to the evidence in support of the position that

a fact is controverted must include reference to the exhibit, title, page, and line numbers."].)

As courts have made clear, the consequences of violating this rule are significant. """[T]his is the Golden Rule of Summary Adjudication: if it is not set forth in the separate statement, *it does not exist*."""" (*City of Pasadena v. Superior Court* (2014) 228 Cal.App.4th 1228, 1238, fn. 4, original italics.) "The separate statement is not merely a technical requirement, it is an indispensable part of the summary judgment or adjudication process." (*Whitehead v. Habig* (2008) 163 Cal.App.4th 896, 902.) "'Separate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for . . . summary judgment to determine quickly and efficiently whether material facts are disputed.'" (*Ibid.*) "That goal is defeated where . . . the trial court is forced to wade through stacks of documents . . . in an effort to cull through the arguments and determine what evidence is admitted and what remains at issue." (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 72.)

Here, in "denying" Protection One's undisputed material facts, Cuzzolina repeatedly cites to his verified complaint and a contention that Protection One's evidence is insufficient. However, "a party cannot rely on the allegations of his own pleadings, even if verified, to make or supplementary the evidentiary showing required in the summary judgment context." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7.) Moreover, a "citation" to an *absence* of evidence wholly fails to establish a triable issue of material fact, as it merely asserts what the other party lacks and

is not evidence in and of itself. Accordingly, Cuzzolina needed more to satisfy his responsive burden.

The trial court therefore was correct to conclude that Cuzzolina did not "produce[] admissible, relevant evidence to establish that [Protection One] provided inaccurate information," whether directly or through an agent, and that Cuzzolina therefore failed to "establish[] that triable issues of fact exist in the cause of action for the CCRAA violations."

3. *Cuzzolina's Arguments on Appeal*

Cuzzolina advances a number of arguments in an effort to demonstrate that Protection One violated section 1785.25, subdivision (a), but we are unpersuaded.

a. *Paragraph 11*

Cuzzolina first argues that Protection One's admission to paragraph 11 of the verified complaint demonstrates that Protection One provided the information to Equifax. Paragraph 11 of Cuzzolina's verified complaint alleges that "[a]s recently as April 24, 2015, Defendants have reported the following information regarding Plaintiff to Equifax." (The text of the allegation is followed by what appears to be a screenshot excerpt of Cuzzolina's credit report.) In response to paragraph 11, Protection One states in its verified answer that "[t]his answering defendant admits the allegations of this paragraph." As Cuzzolina argues, this constitutes a "judicial admission" that Protection One provided the information.

Although Cuzzolina correctly observes that Protection One made a judicial admission, the allegation admitted does not carry the weight he contends it does. "A

judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.) "In summary judgment or summary adjudication proceedings," judicial admissions "'are *conclusive* concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her.'" (*St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234, 1248, original italics.)

Paragraph 11, however, does not explicitly allege that *Protection One* reported any information to Equifax; rather, it alleges that "Defendants" did.[5] The verified complaint defines the term as each defendant "collectively." It would be consistent for Protection One to admit the allegation and contend, as it does here, that it provided the information to codefendant Asset Resources, which then provided it to Equifax. Such a reading would not contradict the allegation that Protection One and Asset Resources "collectively" provided the information, whether or not Asset Resources was acting as Protection One's agent. Moreover, the verified complaint contains no statement to the effect that every reference to "Defendants" is a reference to each of them, which would have more directly implicated Protection One. In fact, the complaint does allege, albeit not in paragraph 11, that "defendants, and each of them" took certain actions. This indicates that the complaint at times differentiates between defendants individually and collectively. Accordingly, we are unconvinced that Protection One's judicial admission

[5] In addition to listing Protection One and Asset Resources as defendants, the verified complaint names 10 "Doe" defendants.

establishes it—as opposed to some defendant—provided information to Equifax either directly or through an agent.[6]

b. *Cuzzolina's Evidence*

Cuzzolina next argues that Protection One provided information to Equifax because in an April 2015 letter Protection One informed Cuzzolina that "[P]rotection One will be happy to 'update' all relevant credit reporting agencies once you have honored your guaranty and satisfied your just debt." Because Protection One offers to "update" the information in exchange for payment, Cuzzolina argues, it "tends to show [Protection One] has control over the information that it reported" to Equifax. Cuzzolina also points to a statement from Allen's declaration that "[o]n April 17, 2015, Asset Resources, pursuant to instructions from Protection One, requested the deletion of the [debt] from the

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[6] Curiously, paragraph 36 of the verified complaint is substantively identical to paragraph 11, yet Protection One denies the allegations in that paragraph. Neither party raises this apparent inconsistency.

At oral argument, Cuzzolina requested supplemental briefing on the issue of judicial admissions, either pursuant to Government Code section 68081 or Code of Civil Procedure section 437c, subdivision (m)(2). Government Code section 68081 provides for supplemental briefing "[b]efore . . . a court of appeal . . . renders a decision in a proceeding . . . based upon an issue which was not proposed or briefed by any party to the proceeding," while Code of Civil Procedure section 437c, subdivision (m)(2) provides for supplemental briefing "[b]efore a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court." The request is denied. Cuzzolina argued the effect of Protection One's judicial admission both before the trial court and on appeal, so Government Code section 68081 does not apply.{RT 6, 9-11; AOB 16-20} Moreover, "[s]upplemental briefing is generally not required under [Code of Civil Procedure section 437c,] subdivision (m)(2) when the issue is 'purely a legal one' and both parties have already briefed the issue," as is the case here. (*Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 336, fn. 12.)

credit bureaus," arguing that it demonstrates that Asset Resources is Protection One's agent.

Cuzzolina did not cite this evidence—or any other admissible evidence—in his separate statement. As the trial court had discretion to disregard evidence not contained in the separate statement, it did not err by not considering it. As discussed above, the """Golden Rule of Summary Adjudication""" is that """if it is not set forth in the separate statement, *it does not exist*."""" (*City of Pasadena v. Superior Court*, *supra*, 228 Cal.App.4th at p. 1238, fn. 4, original italics.) Cuzzolina effectively waived the ability to rely on the statements he now seeks to use to show the trial court erred.

That Cuzzolina may have mentioned this evidence in his opposition memorandum is of no moment. "'[I]t is no answer to say the facts set out in the supporting evidence or memoranda of points and authorities are sufficient.'" (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30.) "Such an argument does not aid the trial court at all since it then has to cull through often discursive argument to determine what is admitted, what is contested, and where the evidence on each side of the issue is located." (*Blackman v. Burrows* (1987) 193 Cal.App.3d 889, 894.) Nor is it enough that Allen's declaration and the April 2015 letter were part of Protection One's evidence. "When a fact upon which plaintiff relies is not mentioned in the separate statement, it is irrelevant that such fact might be buried in the mound of paperwork filed with the trial court; the court does not have the burden to conduct a search for facts that counsel failed to bring out." (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.) This is especially true given that, in Cuzzolina's own words, the evidence is laid

out "in more than 100 pages of documents." Because "[w]e cannot interpret [Code of Civil Procedure] section 437c as permitting a party to ignore its obligation to highlight material facts in the required separate statement, or as allowing for reversal when the trial court does not uncover the facts," we do not consider the effect such evidence might otherwise have had. (*North Coast Business Park v. Nielsen Construction Co.*, *supra*, at p. 32.)[7]

c. *Protection One's Lack of Evidence*

Cuzzolina also argues that Asset Resources was Protection One's agent because, as part of his opposition to the motion for summary judgment, he "challenge[d]" Protection One to produce evidence of the debt assignment to Asset Resources and Protection One "fail[ed] to respond," the implication being that Protection One did not assign the debt because it could not support the claim with documentary evidence. Cuzzolina, however, misunderstands the parties' burdens on a motion for summary judgment. As discussed above, once Allen represented that Protection One assigned the debt to Asset Resources, Protection One met its initial burden, and Cuzzolina was required to "produce '"substantial"' responsive evidence sufficient to establish a triable issue of fact." (*Granadino v. Wells Fargo Bank, N.A.*, *supra*, 236 Cal.App.4th at p. 415.) "Challenging" the moving party to produce more evidence does not satisfy this

[7] In reply, Cuzzolina cites to Protection One's statements, made in its opposition brief, that "a creditor and a debt collector . . . occupy distinct roles in the process" and that "[a] creditor provides the debt collector with information, which the debt collector then uses in connection with efforts to obtain remuneration for the creditor." Such statements, however, were not evidence properly before the trial court.

responsive burden, as it leads to nothing more than speculation as to why the other party stayed silent if or when it does so.[8] "[R]esponsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) Protection One's lack of response to Cuzzolina's "challenge" therefore does not demonstrate Asset Resources was an agent of Protection One.

d. *Evidentiary Objections*

Lastly, Cuzzolina requests we "reevaluate" Protection One's objections to Cuzzolina's evidence, several of which were sustained by the trial court. We decline to do so because Cuzzolina does not attempt to argue why the trial court erred. (*Atchley v. City of Fresno*, *supra*, 151 Cal.App.3d at p. 647.)

4. *Conclusion*

In sum, the trial court properly granted summary judgment for Protection One because Protection One demonstrated it did not provide the allegedly inaccurate information to Equifax, either directly or through an agent. Protection One's judicial admission does not establish otherwise. Once Protection One met its initial burden, Cuzzolina could not satisfy his burden of demonstrating a triable issue of material fact

[8] It is not clear from the record whether Cuzzolina ever sought evidence of the debt assignment in discovery. Given Cuzzolina's apparent surprise that Protection One advanced a "new agency argument" about a debt assignment for the first time in its summary judgment motion, it seems likely he did not. If Cuzzolina wanted Protection One to produce evidence of the debt assignment, a better approach would have been to seek a continuance pursuant to Code of Civil Procedure section 437c, subdivision (h). Regardless, Cuzzolina remained free to object to Allen's representation that the debt was assigned and dispute whether Protection One met its initial burden in the first instance.

merely by arguing a lack of evidence. The evidence Cuzzolina cites on appeal was not properly raised before the trial court.[9]

III. DISPOSITION

The judgment is affirmed. Protection One is awarded its costs on appeal.

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RAPHAEL
J.

We concur:

RAMIREZ
P. J.

MILLER
J.

[9] The parties spend significant portions of their briefs addressing additional issues, such as whether Cuzzolina's cause of action for UCL violations fails as a matter of law and whether Cuzzolina has suffered damages. The parties do not dispute that the UCL cause of action fails if the CCRAA cause of action does. Because we hold that the CCRAA cause of action fails, the UCL cause of action fails as well. The remaining issues raised by the parties thus need not be addressed.